

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re: Dennis E. Hecker

Case No. 09-50779  
Chapter 7

Debtor.

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WATERFRONT PROPERTIES OF AZ, LLC'S RESPONSE TO TRUSTEE'S  
OBJECTION TO RELIEF FROM STAY

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Waterfront Properties of AZ, LLC, hereinafter referred to as "Waterfront", for its response to the Trustee's Objection to Waterfront Properties of AZ, LLC's Motion for Relief From Stay respectfully states and alleges to the Court as follows:

1. Waterfront received an appraisal from a professional appraiser Joseph's Appraisal Group, JAG, Phoenix, Arizona. The appraisal was performed August 19, 2009. The appraisal provides that the Waterfront condominium listed for sale on September 28, 2008, for \$3,195,000.00 is now appraised to have a value as of August 19, 2009, of \$2,500,000.00, a copy of the appraisal is attached hereto as Exhibit A.

2. Shortly after receiving the appraisal, Waterfront received an offer to purchase September 3, 2009. The offer to purchase was for \$2,380,000.00, a copy of the September 3, 2009, offer to purchase attached hereto as Exhibit B. The offer to purchase was contingent upon Waterfront agreeing to accept real estate allegedly worth \$580,000.00. Waterfront rejected the offer to purchase, since Waterfront was not interested in acquiring any other real estate in Phoenix, Arizona.

3. The Trustee asserts that Waterfront's sole asset, condominium located at 7181 East Camelback Road, Unit 1204-1, Scottsdale, Arizona, has a value in excess of \$2.9 million. Attached hereto as Exhibit C is a copy of the only other Purchase Agreement received by Waterfront on or about December 7, 2009. The Purchase Contract provides that Tracy Conrad agreed to buy the condo in question for \$2,315,000.00. The offer was contingent upon Waterfront contributing \$10,000.00 towards the buyer's closing costs, title fees, and HOA fees. The offer was rejected since Waterfront's indebtedness outstanding to Bremer Bank exceeded the offer without considering the realtor's fees.

4. Waterfront has not received any other offers to purchase the condominium. Attached hereto as Exhibit D, is a copy of the property Notice of Valuation received by Waterfront providing that 2010 valuation was \$2,298,500.00. For 2011, the valuation is being reduced \$1,628,000.00. The Maricopa County valuation statement further provides that from 2010 to 2011, condominiums have decreased in value by at least 27%.

5. Waterfront is indebted to Bremer Bank as of February 1, 2010, in an amount in excess of \$2,476,020.63. The obligation outstanding to Bremer Bank is paid quarterly in the amount of \$49,627.96. The quarterly payment amounts to a monthly payment of \$16,542.65. The condominium association fees are \$3,000.00 per month. The real estate taxes are \$17,869.14 per year or \$1,489.10 per month.

6. Since February 27, 2009, Denny Hecker has failed to tender his share of the Waterfront obligations outstanding to creditors including Bremer Bank, for quarterly

principal and interest payments for the quarters ending May 22, 2009 through February 22, 2010, in the following amounts:

BREMER BANK LOAN

<u>Payment Date</u>	<u>Hecker's Share</u>
5/22/09	\$24,813.98
8/22/09	\$24,813.98
11/22/09	\$24,819.98
2/22/10	\$24,819.98

Total amount of Denny Hecker's payments outstanding to Bremer Bank paid by Waterfront/Brent and Richard Olson: \$99,255.92

Condominium Associates Fees

Denny Hecker, 50% owner in the corporation is to pay one-half of the monthly condominium fees. Denny Hecker has not paid any monthly condominium fees for the months of March, 2009 through April, 2010, resulting in payments of \$1,500.00 per month times 14 months for a total \$21,000.00

Denny Hecker has not paid his share of the Maricopa taxes for 2009 in the amount of \$8,934.57

Total amount that Waterfront/Brent Olson and Richard Olson have paid as part of Denny Hecker's Obligation outstanding to Waterfront \$129,190.49

7. Attached as Exhibit E, is a copy of Bremer Bank's quarterly billing demonstrating the payments \$49,627.96. Attached hereto as Exhibit F is a copy of the Waterfront Residence Condominium Monthly billings for Condo Fees in the approximate amount of \$3,000.00.

8. That based on the offers received to date, the property has a value of less than the indebtedness outstanding to Bremer Bank, \$2,473,534.00. In addition, the property has recently been devalued by the Maricopa County Assessor's office from a value from \$2.3 million to \$1.6 million.

9. Attached hereto as Exhibit G is a copy of the Yahoo April 16, 2010, news article regarding US Cities in Freefall as to Real Estate Values. The article provides information regarding the devaluation of real estate values in Phoenix – Mesa – Scottsdale, Arizona area. The news article provides that building permits February of 2007 to February of 2010 is down 83.61%, unemployment has increased 148%, change in new jobs added is a -10% (noting that jobs are being lost not added), and that the change in medium condominium prices are down 37% from the market peak of 2006.

10. Waterfront is seeking relief from the automatic stay to sell the condominium that is the sole asset owned by Waterfront. Waterfront intends to try to sell property for the total amount outstanding to Bremer Bank. If Waterfront is unable to do so, Waterfront is proposing to sell the building for less than what is owing to Bremer Bank in order to cease any further loans to operate the corporation. In the event that the property is sold for more than what is outstanding to Bremer Bank, it is Waterfront's intentions to utilize the surplus proceeds to pay the funds that the Olsons have advanced Waterfront, a corporation, to pay Denny Hecker's obligation as stated herewithin and one-half of any further proceeds to be tendered to the Trustee subject to Hecker creditor's liens.

11. If the property is sold for the present balance outstanding to Bremer Bank and a commission of 5% is paid, and the Olsons are repaid for the funds they have

advanced Waterfront for Denny Hecker's defaulted payments, an additional sum of \$350,000.00 needs to be generated from the sale. The sales price would then have to be approximately \$2,725,000.00. No offer has been obtained since December, 2009. The market for such high-end condominiums is non-existent. The appraisal provided comparable sale condominiums were under \$2,000,000.00 with higher price condominiums on the market for one year to two years prior to being sold.

### CONCLUSION

For the reasons stated herewithin and in Waterfront's original motion, Waterfront respectfully requests that this Court grant Waterfront relief from the automatic stay to move forward and sell the condominium that owned by Waterfront with any surplus proceeds being paid to the estate.

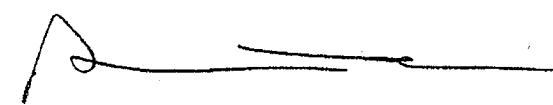
Dated this 20<sup>th</sup> day of April, 2010.

  
Brad A. Sinclair (MN#161652), of  
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10 Roberts Street  
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(701) 232-8957  
ATTORNEYS FOR WATERFRONT  
PROPERTIES OF AZ, LLC

### VERIFICATION

I, Brent Olson, a representative of Waterfront Properties of AZ, LLC, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on 4-20-10

  
By: BRENT C. OLSON  
Its: Treasurer

## **AFFIDAVIT OF SERVICE BY MAIL**

**In Re: Dennis E. Hecker, Debtor  
Bankruptcy Case No. 09-50779  
Chapter 7 Bankruptcy Case**

STATE OF NORTH DAKOTA )  
 ) ss.  
COUNTY OF CASS )

Sherry Michelson, being duly sworn, deposes and says that she is a resident of the City of Moorhead, State of Minnesota, is of legal age; and that she served the within

## **Waterfront Properties of AZ, LLC's Response to Trustee's Objection to Relief from Stay.**

to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

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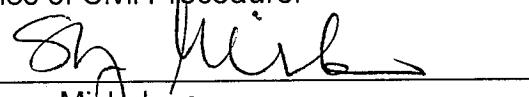
Thomas M. Zappia  
Zappia & LeVahn  
941 Hillwind Road NE, #301  
Fridley, MN 55432

I further declare that ECF will send an e-notice of the electronic filing to the following:

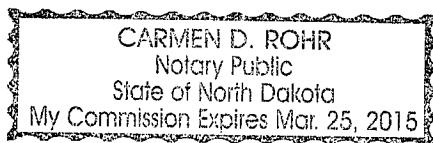
Debtors Attorneys: Clinton E. Cutler ccutler@fredlaw.com  
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LKMCD Properties, LLC Andrew Paul Moratzka apm@mclaw.com  
First National Bank Andrew Paul Moratzka apm@mclaw.com

and depositing the same with postage prepaid in the United States mail at Fargo, North Dakota.

To the best of affiant's knowledge, the address above given is the actual post office address of the party intended to be so served. The above document was mailed in accordance with the provisions of the Minnesota Rules of Civil Procedure.

  
\_\_\_\_\_  
Sherry Michelson

Subscribed and sworn to before me this 20<sup>th</sup> day of April, 2010.



  
\_\_\_\_\_  
Carmen D. Rohr  
Notary Public  
Cass County, North Dakota  
My Commission Expires: